



**Maricopa County**  
Air Quality Department

Number: PP-2013-003

Title: **Administrative Hearing Appeal Process**

Author: Heather Thrasher

Issue Date: November 22, 2013

Revision Date

Review Date: November 22, 2013

Approved by:

**William D. Wiley, Director**

## I. Purpose

This policy establishes a framework for regulated parties to request impartial review of certain agency actions and findings in an administrative hearing before an administrative law judge. This policy supersedes Maricopa County Air Quality Department (MCAQD) Guidance Document for the Enforcement Division Appeal Process (GD-2008-01).

## II. Policy

As authorized by A.R.S. §49-471.01, MCAQD provides a process for a person to request an administrative appeal hearing before an administrative law judge. This policy explains the review process for a person requesting review of appealable agency actions or disputing the inspection findings of an NOV or a proposed OAC by an impartial administrative law judge. This policy does not apply to matters that are appealable to the Air Pollution Hearing Board and does not in any way limit the department's right to take authorized actions at any time.

## III. Definitions

- A. **Administrative Law Judge:** An impartial third party who hears evidence from the appellant and the department before making a recommendation finding to the department's control officer.
- B. **Control Officer:** The director of the Maricopa County Air Quality Department (MCAQD).
- C. **Hearing Administrator:** The designated individual who coordinates the logistics for an administrative hearing that include scheduling an administrative law judge, a court reporter and the meeting room location and set up.
- D. **Order of Abatement by Consent (OAC):** An order of abatement that includes terms determined by the agreement of the parties.

## IV. Requesting an Administrative Law Judge Review to Dispute Inspection Findings

- A. As a prerequisite to requesting a hearing before an administrative law judge, appellants must utilize MCAQD ombudsman services.

- B. Ombudsman services may be requested either within 10 business days after initial receipt of a Notice of Violation or within 10 business days after receipt of the final settlement offer from the enforcement division.
- C. Within 10 business days from the date on the Final Determination Letter from the ombudsman, or a written extension to appeal granted by the department, the appellant may file a written request for review by an administrative law judge with the hearing administrator.
- D. The written request must identify the appellant, appellant's address, matters being appealed and state the basis for the appeal.
- E. A request for hearing may be denied for the following reasons:
  - 1. If the appellant failed to provide requested information to the department on a timely basis.
  - 2. If the appellant failed to make a good faith attempt to resolve the matter through the OAC process.
  - 3. For other reasons determined by the department.

**V. Requesting an Administrative Law Judge Review of Appealable Agency Actions**

- A. Within the timeframe prescribed by statute or rule, or a written extension to appeal granted by the department, the appellant may file a written request for review by an administrative law judge with the hearing administrator.
- B. The written request must identify the appellant, appellant's address, matters being appealed and state the basis for the appeal.

**VI. Scheduling the Hearing**

- A. The department will schedule a hearing within 60 days of a request unless otherwise requested. Arrangements for a hearing include identifying dates when the responsible inspector(s) is available to testify, scheduling the hearing date with the appellant, an administrative law judge, a court reporter and Maricopa County legal counsel.
- B. The department will notify all parties to the proceeding of the hearing date and will post the hearing notice on the department's online website.

**VII. Hearing Procedures**

At the established date and time of the hearing, the administrative law judge will conduct a hearing of the contested matter, hear testimony of witnesses, admit evidence and review applicable law. The hearing proceedings will be recorded and preserved as a record of the proceeding. The administrative appeal hearings will be governed by the uniform administrative procedures in A.R.S. 49.471.15 and A.R.S. Title 41, Chapter 6, Article 10 for appeals to an administrative law judge.

*DISCLAIMER: The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.*

## **VIII. Final Decision**

- A. The administrative law judge will prepare a written recommendation that includes findings of fact and conclusions of law. The recommendation will be delivered or mailed to the control officer.
- B. The control officer may adopt, revise or reject the administrative law judge's recommendation and will then issue the department's decision.

## **IX. Next steps**

The appellant may either agree or disagree with the department's decision.

- A. Reviews to Dispute Inspection Findings:
  - 1. If the appellant agrees to the department's decision, the department and appellant may enter into an OAC. The OAC may include the appellant taking specified action and/or paying a penalty pursuant to A.R.S. §49-511.
  - 2. If the department does not dismiss the matter or the appellant fails to enter into an OAC, the department may refer the matter to the U.S. Environmental Protection Agency or the County Attorney's Office for further action which may include commencing action in Superior Court.
- B. Review of Appealable Agency Actions: If the appellant agrees to the department's decision, the agency action stands or may be modified according to the department's final decision.

***DISCLAIMER:** The policies and procedures outlined in this guidance are intended to supplement existing requirements. Nothing in the policies or procedures shall affect regulatory requirements. The policies and procedures herein are not an adjudication or a regulation. There is no intent on the part of the department to give the rules in these policies that weight or deference. This document establishes the framework within which the department will exercise its administrative discretion in the future. The department reserves the discretion to deviate from this policy statement if circumstances warrant.*